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# CASE LAW ON UNCITRAL TEXTS
# (CLOUT)

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## INTRODUCTION

This compilation of abstracts forms part of the system for collecting and disseminating information on court decisions and arbitral awards relating to Conventions and Model Laws that emanate from the work of the United Nations Commission on International Trade Law (UNCITRAL). Information about the features of that system and about its use is provided in the User Guide (A/CN.9/SER.C/GUIDE/1). CLOUT documents are available on the website of the UNCITRAL Secretariat on the Internet (http://www.uncitral.org).

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## I. CASES RELATING TO THE UNITED NATIONS SALES CONVENTION (CISG)

Case 248: CISG 25; 39; 49(1)(a); 74
Switzerland: Schweizerisches Bundesgericht (I. Zivilabteilung); 4C.179/1998
28 October 1998
Original in German
Abstract published in German: [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 179

The German sellers, plaintiffs, delivered frozen meat by ship to Egypt and Jordan for a Swiss buyer, defendant. The buyer claimed lack of conformity of the goods and refused to pay the purchase price. The lower court ruling in favour of the sellers was confirmed by the appellate court. The buyer appealed further to the superior appellate court.

The issues before the court were whether the buyer had a right to declare the contract avoided and whether the buyer was entitled to damages for the loss of clientele, which the buyer claimed had resulted from the seller's breach of contract.

The court held that the difference in quality between that as had been agreed and that as was delivered was not significant enough to give the buyer a right to declare the contract avoided, even though experts estimated that the decrease in value of the goods, which were too fat and too wet, amounted to 25.5 per cent. The court stated that the CISG operates from the principle that the contract shall be avoided only in exceptional circumstances and that the right to declare a contract avoided is the buyer's most serious remedy. Whether or not this remedy is justified has to be determined by taking into account all the relevant circumstances of the particular case. Such factors include the buyer's ability to otherwise process the goods or to sell them, even at a lower price. The court confirmed the lower court's finding that the buyer had had such alternatives and therefore denied the buyer the right to declare the contract avoided. The buyer could merely avail itself of a reduction in price of 25.5 per cent (articles 25 and 49(1)(a) CISG).

In regard to the second issue, the lower appellate court had held that the buyer's loss of clientele as a result of the breach was not foreseeable and that the seller could be expected to undertake such an exceptional risk only if representations were made during the negotiations and if the seller had had an opportunity either to decline responsibility or take it into account when fixing the price. By contrast, the superior appellate court held that such loss was foreseeable, particularly since the buyer was a wholesale trader in a sensitive market and had no alternative in order to carry out its obligation in time. Under the circumstances of the present case, no specific agreement as to the seller undertaking such risk was needed (article 74 CISG). For these reasons, the court found that the buyer was entitled to damages but referred the case back to the lower court as to the amount of the damage award.

Not at issue before the superior appellate court was 1) the holding by the lower court that a notice of lack of conformity made within 7 to 17 days was in time, given that the goods in question concerned meat that was frozen, not fresh (article 39 CISG); and 2) the ruling that, as the CISG does not expressly deal with the burden of proof, such lacuna must be filled by interpretation of the Convention.

Case 249: CISG 39(2)
Switzerland: République et Canton de Genève, Cour de Justice; C/21501/1996
10 October 1997
Original in French
Published in French: Bettschart (ed.), Les Ventes Internationales: Journée d'étude en l'honneur du professeur Karl H. Neumayer (Cedidac Nr. 36) (Lausanne) (1998) 141
Abstracts published in German: [1998] Schweizerische Juristen-Zeitung 146; [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 182
Commented on in French: Witz, [1998] Recueil Dalloz, 35ème Cahier, Sommaires Commentés 316; and in German: Will, [1998] Schweizerische Juristen-Zeitung 146

A Swiss seller, defendant, delivered acrylic cotton to a French buyer, plaintiff, who notified the seller of the lack of conformity of the goods. The buyer commenced proceedings in Switzerland within two years but after expiry of the one-year limitation period under Swiss domestic law. The issue before the court was how to deal with the conflict between article 39(2) of the CISG, which requires the buyer to give the seller notice of the lack of conformity within two years, and the shorter limitation period under Swiss domestic law.

The court of first instance resolved the conflict by replacing article 210 of the Swiss Code of Obligations (CO) with article 127 CO, i.e. the general rule of limitation pursuant to which the period of limitation is ten years unless otherwise provided by law.

The appellate court chose a different approach. It noted that there was a distinction to be made between an action for breach of warranty under Swiss domestic law, which had to be brought within one year, and a claim for lack of conformity under the CISG, which had to be brought within two years. The court first referred to article 1(2) of the Swiss Civil Code and noted that the judge, in view of an issue not resolved by the law, has to decide according to the rules which the judge would lay down if the judge had to act as legislator. The court then searched for a solution as close as possible to article 210 CO, while respecting the CISG at the same time. It brought into line the rules of Swiss domestic law with the CISG by extending to two years the one-year period prescribed under article 210 CO.

The decision has not yet become final, as an appeal to the superior appellate court is pending.

Case 250: CISG 6
Switzerland: Handelsgericht des Kantons Zürich; HG960181
16 December 1998
Original in German
Abstract published in German: [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 184

A Swiss seller, plaintiff, sold designer watches to a German buyer, defendant. Delivery of the goods was effected through an overnight carrier, who placed the parcel in front of the buyer's closed offices early in the morning. The buyer claimed never to have received the goods and the seller sued for the purchase price.

The issue before the court was whether or not the CISG was applicable. Although the parties had excluded the CISG in general contract terms, the defendant later questioned this exclusion. By

analogy with article 100(1) of the Swiss Code of Obligations, pursuant to which an agreement excluding a party's liability for gross negligence or intentional wrongdoing is void if made in advance, the defendant argued that the same rule should apply to an agreement excluding the CISG. The court rejected this reasoning and noted that the CISG prevails unless the legislator enacts a superseding rule. It found that the cited article of Swiss domestic law was not such a rule. As there were no other reasons hindering the parties' exclusionary clause, the CISG was not applicable (article 6 CISG).

Case 251: CISG 1(1)(b); 4; 8; 35; 38(1); 39(1); 40; 73
Switzerland: Handelsgericht des Kantons Zürich; HG930634
30 November 1998
Original in German
Abstract published in German: [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 185

A Swiss seller, plaintiff, sold lambskin coats to a Liechtenstein buyer, defendant, which were to be delivered in Belarus. After some of the coats were delivered, the buyer gave notice of lack of conformity to the seller, who had not previously seen the goods and therefore examined them at the buyer's request, and declared the contract avoided. The buyer demanded reimbursement of payments that had been made and the seller sued for the remainder of the full contract price.

The court held that the CISG was applicable even though Liechtenstein is not a Contracting State. Under the rules of private international law in Switzerland, in conjunction with article 3(1) of the Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods, the contract was governed by the law of the State of the seller's habitual residence, so that in this case the CISG as a part of Swiss law was applicable (article 1(1)(b) CISG).

The court characterized the sales agreement as a contract for the supply of goods by instalments and held that, even though the instalment deliveries were not of the same kind of goods, article 73 of the CISG, which differed in that regard from Swiss law, was applicable.

The court held that the buyer had lost its right to rely on a lack of conformity as a defense because examination of the goods and notification had not been carried out in time. It found that a period of "one week to ten days" for the examination and "a rather generous period" of two weeks for notification would have been adequate; the buyer could have easily examined the coats and could have limited the examination to random samples. The court stated that the period contemplated under the CISG has as its purpose to enable the buyer to notify the seller of any defects before the goods are resold; also, from the point of view of a functioning international trading system, there is no reason to extend these time periods for examination and notice (articles 38(1) and 39(1) CISG). Furthermore, the court found that the facts did not support the buyer's argument that the seller had known of and had not disclosed the lack of conformity. It held that if a seller examines the goods at the request of the buyer, the seller does not thereby waive its right to rely on late notification (article 40 CISG). The fact that the seller had invoked late notification after having examined the goods was not contrary to the principle of good faith (article 8 CISG).

The court found that the fact that some of the coats had been identified with article numbers other than as had been originally agreed was not a defect as alleged by the buyer, but had been arranged by supplementary agreement between the parties. It stated that, even if this were found to be a defect, although the seller must deliver goods that conform to the contract, such a lack of conformity does not rise to the level of a breach of contract if the goods are of equal value and their utility is not reduced (article 35 CISG).

In addition, the court held that questions concerning the burden of proof are not governed by the Convention, but that due to its underlying systematic structure, certain principles may be inferred. As liability for the defect of goods is a critical aspect of the seller's obligations under the contract, it is incumbent upon the seller to prove the absence of defects at the time of passing the risk. The buyer bears the burden of proof for reasonable examination and notice of non-conformity, and, after having accepted the goods without giving notice of non-conformity, the burden of proof for the existence of any defects at the time of passing the risk shifts to the buyer (article 4 CISG).

Case 252: CISG 35; 39(1)
Switzerland: Handelsgericht des Kantons Zürich; HG960527
21 September 1998
Original in German
Abstract published in German: [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 188

An Italian printer, plaintiff, produced books and an art exhibition catalogue for a Swiss publisher, defendant. The buyer refused to pay the purchase price, claiming lack of conformity.

The court held that the buyer had failed to comply with its duty to notify the seller of the lack of conformity with sufficient specificity. Fulfillment of the requirement of specificity, the court explained, should put the seller in the position of having been adequately informed as to the lack of conformity. Notification in general terms is therefore not enough, although this requirement should not be exaggerated. A more precise description can be expected from a specialist than from a lay person (article 39(1) CISG). Moreover, the court rejected the buyer's argument as to the lack of conformity; of several alleged defects, the proven defect amounted to one line being out of place in the catalogue, which did not in any way impede the legibility of the text. The court stated that, although a seller can be held liable even for a non-essential lack of conformity, this is only if the defect lowers the value of the goods (article 35 CISG).

Case 253: CISG [4]
Switzerland: Repubblica e Cantone del Ticino, La seconda Camera civile del Tribunale d'appello; 12.97.00193
15 January 1998
Original in Italian
Abstract published in German: [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 189

An Italian buyer, plaintiff, bought from a Swiss seller, defendant, 300 tons of cacao beans which were shipped from Ghana. The beans were to contain fat of at least 45 per cent and

acidity of no more than 7 per cent. As provided in the contract of sale, payment was made against documents, which included a certificate of conformity. Tests of the beans after delivery in Italy, however, revealed that their values were not as had been certified. In litigation commenced by the buyer in Switzerland for recovery of the purchase price, it was not possible to determine whether the goods were already defective when handed over to the carrier.

On the issue of which of the parties had to bear the burden of proof, the court stated that, as a matter of principle, attribution of the burden of proof is to be determined by the law applicable on the merits, which, in this case, was the CISG. The court noted that the CISG does not contain any particular rule on the burden of proof as to the conformity of goods. Furthermore, it noted that views on this matter as expressed by scholars are divided: according to some, the CISG implies that the buyer should bear the burden, whereas others would attribute the burden in accordance with domestic law. The court was able to leave the issue open because, under the law of the forum as well as under the CISG, the buyer had to bear the burden of proof.

Case 254: CISG 74; 78
Switzerland: Handelsgericht des Kantons Aargau; OR.97.00056
19 December 1997
Original in German
Abstract published in German: [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 192

A German seller of garments, plaintiff, sued the Swiss buyer, defendant, for the purchase price, interest, and its legal costs in both Germany and Switzerland.

The court rendered a default judgment in favour of the seller, comprising the purchase price and interest (article 78 CISG). The interest rate was determined in accordance with German law, which had been chosen as applicable law by the parties. The seller was also awarded as damages the legal expenses of its lawyers in Germany and Switzerland. The court stated that all costs incurred in the reasonable pursuit of a claim are refundable, which included retaining a lawyer in the country of each party (article 74 CISG).

Case 255: CISG [4]
Switzerland: Kantonsgericht Kanton Wallis (Zivilgerichtshof I); CI 98 9
30 June 1998
Original in German
Abstract published in German: [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 192

An Italian seller, plaintiff, sued a Swiss buyer, defendant, for payment of the delivery of granite materials. While neither the application of the Convention nor the payment obligation in principle were in dispute, the question arose whether payment had to be made in Italian lire or in Swiss francs.

The Court noted that the CISG does not deal with the currency in which the purchase price has to be paid, which is an issue to be determined in accordance with the law applicable to the

contract [article 4 CISG]. In the present case, the contract was governed by Italian law, pursuant to which the seller had the right to receive payment in Italian lire.

Case 256: CISG 7(2); 33; 39(1)
Switzerland: Tribunal Cantonal du Valais (IIe Cour Civile); CI 97 288
29 June 1998
Original in French
Abstract published in German: [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 193

The plaintiff, an Italian clothing sales company, filed a lawsuit against the buyer, a Swiss company, requesting payment of the purchase price. The defendant buyer pleaded late delivery and lack of conformity of the goods.

The court found that the parties never had agreed on a final date of delivery and that the delivery had taken place within a reasonable time after the conclusion of the contract (article 33 CISG). It held that notification of lack of conformity given to the seller seven to eight months after delivery was by far too late (article 39(1) CISG). The interest rate on the purchase price was determined by application of the law governing the contract, which in this case was Italian law (article 7(2) CISG).

Case 257: CISG 53
Switzerland: Tribunal Cantonal du Vaud; 01 95 0015
24 December 1997
Original in French
Abstract published in German: [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 193

A Danish seller, plaintiff, delivered furniture to a Swiss buyer, defendant, and commenced a lawsuit requesting payment of the purchase price.

The court did not find it necessary to determine whether the case fell within the scope of the CISG since both the CISG (article 53) and Swiss domestic law (article 211 of the Swiss Code of Obligations) led to the same result, namely, that the buyer was bound to pay the price. (Nevertheless, the action was dismissed for procedural reasons.)

Case 258: CISG 1(1)
Switzerland: Repubblica e Cantone del Ticino, La seconda Camera civile del Tribunale d'appello; 10.96.00029
15 December 1998
Original in Italian
Abstract published in German: [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 194

A Chilean company, plaintiff, brought a lawsuit against a company, defendant, that had its place of business in the British Virgin Islands.

The court held that the CISG did not apply, because the relevant sales contract was concluded not with the defendant, but with another company that, although allied with the defendant, had its place of business in Chile. The Convention applies only to contracts between parties in different States (article 1(1) CISG).

Case 259: CISG 4; 8
Switzerland: Kantonsgericht Freiburg; Apph 27/97
23 January 1998
Original in German
Abstract published in German: [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 194

A German producer of machinery, plaintiff, sold a commercial laundry machine to a Swiss buyer, defendant, and delivered the machine to the final customer in Hong Kong. The buyer refused to pay the price, declaring a setoff with claims arising out of a related consulting agreement with the seller. While the payment obligation under the sales contract, which was governed by the CISG, was not in dispute, the existence and the amount of the setoff were under controversy.

The first issue was whether a standard set of General Terms and Conditions, pursuant to which the setoff claim would have been excluded, formed part of the sales contract. The court held that this issue was not governed by the CISG, and under German domestic law the General Terms and Conditions did not form part of the contract (article 4 CISG).

While stating that the CISG does not deal with setoff (article 4 CISG), the court nevertheless referred to article 8 of the CISG in construing the consulting agreement. This uniform rule, the court noted, coincides with corresponding principles under German and Swiss domestic law. The court concluded that if the interpretation of a statement made by a contracting party coincides with the interpretation of statements made by the other party, a corresponding intent of the parties will be assumed. If, however, interpretation of statements made by both parties does not lead to a congruent result, the intent of the parties has to be elicited in accordance with the principles of Swiss domestic law.

Case 260: CISG 2(d)
Switzerland: République et Canton de Genève, Cour de Justice (Chambre civile); C/8157/1992
9 October 1998
Original in French
Abstract published in German: [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 195

A dispute concerning a sale of the shares of a company incorporated in Cote d'Ivoire arose between a Panamanian company and several persons domiciled in the United Kingdom.

The court noted that the CISG was not applicable because the sale of stocks, shares, investment securities, negotiable instruments or money is excluded from the scope of application of the Convention (article 2(d) CISG).

Case 261: CISG 1(1)(a); 7(1); 10(a); 32(2); 63(1); 64(1)(b); 72(1); 81(1); 81(2); 84(1)
Switzerland: Bezirksgericht der Saane (Zivilgericht); T 171/95
20 February 1997
Original in German
Abstract published in German: [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 195

An Austrian company, plaintiff, entered into a contract for the purchase and transport of spirits to Russia with the Swiss branch of a company that had its headquarters in Liechtenstein. The contract was never performed because a dispute arose among the parties regarding the mode of transport and the final date of performance. The Austrian buyer sued the Swiss seller for repayment of an advance payment, while the defendant claimed damages for breach of contract.

The court held that, even though Liechtenstein was not a Contracting State, the Convention was applicable because the Swiss branch, not the Liechtenstein headquarters, was the place of business that had the closest relationship to the contract and its performance (articles 1(1)(a) and 10(a) CISG).

The factual issue in dispute was whether the parties had agreed that the goods were to be transported by truck, as the buyer claimed, or whether the choice of the mode of transport had been left to the seller. The court held that, as the CISG does not contain rules on the burden of proof, it is necessary to rely on the rules of private international law of the forum, which, in this case, led to the application of Swiss domestic law (article 7(2) CISG). Since the buyer was unable to meet the burden of proof evidencing an agreement to transport the goods by truck, the court found that the choice of transportation mode had been left to the seller (article 32(2) CISG).

The court held that, since the buyer had not established a letter of credit as the parties had agreed, the seller had the right to declare the contract avoided after having fixed an additional period of time for performance (articles 63(1) and 64(1)(b) CISG). It rejected the argument made by the buyer under article 72(1), that, because the seller had held back delivery of the goods, the buyer was entitled to declare the contract avoided. Since avoidance of the contract released both parties from their obligations under it (article 81(1) CISG), the buyer was entitled to repayment of its advance payment together with interest (articles 81(2) and 84(1) CISG) calculated in accordance with Swiss law (article 7(2) CISG). The seller, on the other hand, was awarded only part of its claim for damages. Noting that the CISG does not address how damages are to be calculated if the amount cannot be determined, the court applied Swiss domestic law, which was found to be applicable under article 3(1) of the Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods.

Case 262: CISG 1(1)(b); 3(1); 39(1); 58(1); 58(3)
Switzerland: Kanton St. Gallen, Gerichtskommission Oberrheintal; OKZ 93-1
30 June 1995
Original in German
Abstract published in German: [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 197

In 1990, a contract was entered into between an Austrian seller, plaintiff, and a Swiss buyer, defendant, for delivery and installation of four sliding gates. On grounds of lack of conformity, the buyer refused to pay the purchase price and the seller commenced proceedings.

The first issue was whether the CISG was applicable, since, in 1990, the CISG had entered into force in Austria but not yet in Switzerland. The court rejected the buyer's argument that all of the facts of the case pointed to Swiss law, noting that, therefore, Swiss law would apply only if the parties had so chosen. It held that, pursuant to the private international law rules of Switzerland, the contract was governed by Austrian law and that, therefore, the CISG was applicable (article 1(1)(b) CISG).

The agreement was characterized as a contract for the supply of goods to be manufactured (article 3(1) CISG). The court did not accept the buyer's defense, namely, that the reasonable period of time for notification of lack of conformity had not begun to run since the seller had not finished its work. Instead, the court found that delivery had taken place even though at the time of the first inspection, in which both parties had been involved, the work was not entirely completed (article 58(3) CISG). The minor improvements that were made thereafter, although necessary, did not affect the time of delivery in the sense of article 58(1) of the CISG. The court held that the notice of the lack of conformity, which had been given one year after delivery, was obviously too late (article 39(1) CISG).

Case 263: CISG 39(1)
Switzerland: Kanton St. Gallen, Bezirksgericht Unterrheintal; EV.1998.2 (1KZ.1998.7)
16 September 1998
Original in German
Abstract published in German: [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 198

A German bank, plaintiff, acquired by assignment a claim from a German seller against a Swiss buyer, defendant, arising from the delivery of furniture. When the buyer refused to pay, based on an alleged lack of conformity, the bank commenced legal proceedings.

The court held that the notice of lack of conformity, which was given over one year after delivery of the goods, was given far too late (article 39(1) CISG).

Case 264: CISG 6
Switzerland: Bezirksgericht Weinfelden
23 November 1998
Original in German
Abstract published in German: [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 198

A German seller, plaintiff, sold milking machines to a Swiss buyer, defendant, and the parties agreed that the contract was to be governed by German law.

The court held that, although the CISG is part of German law, when choosing German law, the parties had in mind not the CISG but the German Civil Code. The court therefore applied the rules of the German Civil Code.

Case 265: CISG 1(1)(a); 47; 62; 73(2); 77
Hungary: Arbitration Court attached to the Hungarian Chamber of Commerce and Industry
Arbitral award in case No. Vb/97142 of 25 May 1999
Original in Hungarian
Unpublished

An Austrian buyer, defendant, and a Hungarian seller, claimant, signed a contract for the purchase and sale of sour cherries. A part of the goods had already been delivered when the price of cherries rose significantly. The seller was willing to bear the consequences of the increase in price for the goods that had already been delivered, but terminated the contract in respect of the non-delivered goods. The seller claimed that the buyer had given its oral consent to the termination. The buyer denied having given such consent and did not pay for the delivered goods. The buyer claimed that non-delivery of the goods outstanding under the contract had caused the buyer more damage than the value of the goods it had received. The seller claimed payment of the purchase price and the buyer counterclaimed for the damage that it had sustained due to non-delivery.

As each party had its place of business in a Contracting State, the tribunal stated that the Convention was applicable (article 1(1)(a) CISG). The tribunal held that the claim was partially founded, so the buyer had to pay for the goods already delivered (article 62 CISG). As the seller was unable to prove the buyer's consent to the termination of the contract, the tribunal found that the seller was responsible for the damages of the buyer and the buyer was entitled to make a covering purchase (article 47 CISG). The buyer was entitled to terminate the contract concerning the non-delivered part of the goods (article 73(2) CISG). On the other hand, the buyer did not fulfill its duty to mitigate its loss (article 77 CISG). The tribunal held that both the claim and counterclaim were only partially founded and therefore divided the damage between the parties.

## II. CASES RELATING TO THE UNCITRAL MODEL ARBITRATION LAW (MAL)

Case 266: MAL 4
Hungary: Arbitration Court attached to the Hungarian Chamber of Commerce and Industry
Arbitral award in case No. Vb/97142 of 25 May 1999
Original in Hungarian
Unpublished

A dispute arose between an Austrian buyer and a Hungarian seller over a contract for the purchase and sale of sour cherries.

Although the contract did not contain a valid arbitration clause, the tribunal found that it had jurisdiction to hear the matter. This was because the seller had submitted its claim to the tribunal and the buyer, without stating any objection concerning jurisdiction, put forward its defence (article 4 MAL).

(For the decision on the merits under the CISG, see Case 265).

Case 267: MAL 33; 34
Zimbabwe: Harare High Court (Judge Devittie); Judgment No. HH-231-98
29 March and 9 December 1998
Zimbabwe Electricity Supply Commission v. Genius Joel Maposa
Original in English
Unpublished

The employer suspended from duty one of its senior employees pending disciplinary hearings into alleged misconduct. Suspension was initially with full pay, and subsequently without pay effective 5 February 1997. The employment dispute was submitted to arbitration. The tribunal awarded the employee his salary and benefits together with interest from 24 December 1996. The employer sought to have the award set aside on the basis that the arbitrator had made a reviewable factual error in calculating the back-pay, and that error, under Zimbabwe's Arbitration Act 1996, Article 34 (MAL, Article 34), rendered the award contrary to public policy.

The court considered that an award which was contrary to public policy would be one that would undermine the integrity of the system of international arbitration put in place by the model law and that this would include cases of fraud, corruption, bribery and serious procedural irregularities. The court held that, as in this case it was not suggested that any moral turpitude attached to the arbitrator's conduct, the award could not be said to be in conflict with public policy (MAL, Article 34). It found that the error was clearly one of computation for which the model law makes adequate provision; a party may request the tribunal to correct such errors and, if necessary, the time limits for making such a request may be extended (MAL, Article 33).

## III. ADDITIONAL INFORMATION

*Addendum*

(Arabic, Chinese, English, French, Spanish and Russian texts)

Case 46
Commented on in German: Ferrari, [1998] Zeitschrift für Europäisches Privatrecht 162

Case 48
Commented on in German: Ferrari, [1998] Zeitschrift für Europäisches Privatrecht 162

Case 54
Commented on in German: Ferrari, [1998] Zeitschrift für Europäisches Privatrecht 162

Case 219
Published in French: [1998] Revue valaisanne de jurisprudence 140

Case 221
Abstract published in German: [1999] Schweizerische Zeitschrift für Internationales und Europäisches Recht 190

Case 241
Commented on in French: Witz, [1999] Recueil Dalloz, 26ème Cahier, Jurisprudence 383

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